

PHARR-SAN JUAN ALAMO I.S.D.  
C-5149-1411  
PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL (OLD MEMORIAL MIDDLE SCHOOL) – PHASE 1  
RENOVATIONS AND ADDITIONS COMPETITIVE SEALED BID # 09-10-006  
BID OPENING: MARCH 24, 2010 @ 4:00P.M.

**28. Venue:**

The parties agree any dispute or litigation that may arise in the execution and/or performance of this contract, venue for all proceedings, judicial or otherwise, shall be proper in a State District Court Hidalgo, County Texas.

**29. Indemnification:**

The District will not indemnify and/or hold harmless, an entity from any and all damages that an entity may become liable for as a result of the execution and performance of this contract, Including but not limited to court costs, fees, fines, and/or attorney fees.

**30. Arbitration:**

The District will not enter into a contract that includes arbitration language.

**31. Choice of Law:**

The parties agree Texas laws will apply in resolving or litigating a dispute.

**32. Vendor Year 2000 Compliance:**

Any software, firmware, or hardware purchased by any member of the District from any awarded bidder under this contract shall accurately perform date-related operations when given a valid date containing century, year, month and day. The accurate operation of the software shall ensure that (1) calculations using dates must execute correctly using a four digit year, (2) on-line and batch functionality, including, but not limited to entry, Inquiry, maintenance, and update must support four digit year processing, (3) user and data interfaces and reports must support four digit year processing, (4) successful transition into year 2000 with the correct system date (e.g. 1/1/2000) is supported without human intervention, (5) processing with a four digit year after transition to and beyond the year 2000 is provided, including backward data compatibility, and (6) correct results in forward and backward data calculations spanning century boundaries, including leap years are provided.

**33. Waiver:**

No claims or rights arising out of a breach of this contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

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**34. Interpretation – Parol Evidence:**

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Texas Business & Commerce Code is used in this agreement, the definition contained in the Code shall be controlling.

**35. Right to Assurance:**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

**36. Extension / Non-Appropriations Clause:**

This contract maybe renewed for (1) one additional year if the vendor and the District mutually agree and no increases in costs are incurred except for the growth. Non-appropriations for renewal of contract will also be in accordance with the Local Government Code 271.005 (b) concerning non-appropriation clauses for multi-year contracts. Each participating local government member reserves the right to rescind the contract at the end of the fiscal year if it is determined that funding is not available to extend the contract.

**37. Proposal Acceptance:**

The period for acceptance of this proposal will be sixty (60) calendar days unless a different period is indicated by the bidder.

**38. Insurance Requirements:**

To protect the district and it's employees against liability, loss or expense on account of damage to property or injury or death to any person or persons arising in any way out of or in connection with or resulting from the work provided hereunder, bidder shall procure and maintain, at its sole expense and until acceptance of the work by the district, insurance as hereinafter enumerated in policies which shall be subject to the district's approval as to form, amount and issuing company. Amounts listed are minimum.

**PHARR-SAN JUAN-ALAMO I.S.D.**  
**C-5149-141**  
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**BID OPENING: MARCH 24, 2010 @ 4:00P.M.**

Bidder must carry and provide proof of insurance which meets the requirements established by the Pharr-San Juan-Alamo Independent School District. Proof of insurance coverage must be submitted with bid. This insurance is required only for work done on school district property.

**INSURANCE REQUIREMENTS:**

Workman's Compensation	Statutory Limits
Employer's Liability	\$ 500,000 each accident \$ 500,000 policy limit \$ 500,000 each employee
General Liability	\$ 500,000 Combined Single
Bodily Injury & Property Damage	Limits / \$1,000,000 Aggregate
Automotive Liability	\$ 250,000 each person
Bodily Injury –	\$ 500,000 each accident /
Property Damage	\$ 250,000

**39. Installation (When applicable):**

The successful bidder shall provide the following services and requirements at no additional cost above the initial bid price on equipment or furniture. Provide transportation of the items to the building, locating the items in the proper location within the building, uncrating, complete assembly and adjustment by a trained installation mechanic and removal of all debris. Set in place, make the machine ready, start up, analyze and correct any malfunction of the equipment. Provide all materials, equipment and labor to place machinery in top operating condition or to fully assemble furniture.

**40. Inquiries and Interpretations:**

Responses to inquiries which directly affect an interpretation or change to this bid / proposal will be issued in writing by PSJA ISD as an addendum. Vendors WILL NOT be notified of additional information / addendum postings. It is the vendor's responsibility to view the web page regularly, or prior to submitting a bid / proposal response, to ensure that no addendum or additional information have been issued for the solicitation. All such addendum issued by PSJA ISD prior to the time that bids are received shall be considered part of the bid / proposal.

**41. Evaluation Factors and Criteria**

Offerors are required to provide all requested information set forth below. Failure to provide requested information or omissions of requested information may result in Pharr-San Juan-Alamo Independent School District determining that the offeror's bid is non-responsive and can result in disqualification of bid.

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Offerors will be evaluated on criteria 1 through 5 with a maximum of 100 total points. The evaluation committee comprised of District staff will evaluate the bids. The district shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded. The committee will present its recommendation to the Board. The Board of Trustees retains the right to award or reject all bids in their entirety.

The District retains the right to apply all criteria as appropriate and allowed in Education Code 44.031 section (b). The District specifically requests offeror's to answer or provide information according to the following selection criteria. Questions left unanswered will result in zero (0) points awarded.

**Criterion 1:** Offeror's proposed price (Section 44.031 (b) (1) and (7). *(65 points awarded for this area)*

*Offerors must submit the completed Bid Form, Bid Bond, Insurance, and other forms required. Must also submit estimated subcontractor list and schedule of values.*

**Criterion 2:** Offeror's Time to complete the project (Section 44.031 (b) (4), (7), and (8)). *(10 points awarded for this area)*

*Offerors must complete proposed days to completion portion of the bid. The contractor must submit a timeline for completion of the project together with the bid.*

**Criterion 3:** Offeror's experience with public entity and/or commercial projects of similar size, scope, and/or complexity (Section 44.031 (b) (8)). *(10 points awarded for this area)*

*List projects, completed or ongoing of similar size, scope, and/or complexity to this project where your company was the general/prime contractor of record. Please list projects in chronological order, beginning with the most recent, using the following format and example.*

Project Name	Project Size in Sq Ft	Location	Owner Representative that dealt with Construction	Architect	Contract Amount	Unique Features/complexity	Completion Date and Days to Completion
ABC Project for X School	85,000	City, ST	Mr. Smith Address Phone #	Architect Address Phone #	\$1,000,000	List details	December 31, 2009 (500 Days)

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**Criterion 4:** Proposed on site Project Foreman – Offeror's proposed Project Foreman Management experience on public entity and/or commercial projects of similar size, scope, and/or complexity (Section 44.031 (b) (8). (5 points)

*Please provide the name of the project foreman(s), project, date completed, contract amount, and capacity served on the projects where project foreman has demonstrated experience managing subcontractors on construction projects of similar size and complexity in the format below.*

Project Foreman Name: John Doe

Project Name and Location	Project Size in Sq Ft	Capacity Served	Owner Rep that dealt with Construction	Contract Amount	Unique Features/Complexity	Completion Date and Days to Completion
ABC Project City St	85,000	Project Foreman	Mr. Smith Address Phone #	\$1,000,000	List Details	January 5, 2009 (300 days)

**Criterion 5:** Reputation and Quality of the vendor (contractor) and of the vendors goods or services (Section 44.031 (b) (2), (3), and (8) (10 points)

*Provide a list of (up to ten) comparable projects completed or ongoing within the last ten years.*

Project Name	Date Completed	Total Value of Project
ABC School	January 1, 2009	\$5,000,000

*Provide a list of any projects located in the Rio Grande Valley (past or present) performed by the entity, its principals, or the proposed job superintendent.*

Project Name	Date Completed	Total Value of Project
ABC School	January 1, 2009	\$5,000,000

*Provide a list of any PSJA ISD projects performed at any time by the entity, its principals, or the proposed job superintendent.*

Project Name	Date Completed	Total Value of Project
ABC School	January 1, 2009	\$5,000,000

**Maximum Total Points to be awarded 100.**

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# AIA® Document A101™ – 2007

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Fourth day of May in the year 2010  
*(In words, indicate day, month and year.)*

BETWEEN the Owner:  
*(Name, legal status, address and other information)*

Pharr-San Juan-Alamo Independent School District  
P.O. Box 769  
Pharr, Texas 78577  
Telephone Number: (956) 702-5617  
Fax Number: (956) 783-2257

and the Contractor:  
*(Name, legal status, address and other information)*

Texas Descon, L.P. by Descon 4S, L.L.C.  
It's General Partner  
P.O. Box 3547  
McAllen, Texas 78502-3547  
Telephone Number: (956) 682-1225  
Fax Number: (956) 682-7369

for the following Project:  
*(Name, location and detailed description)*

PSJA ISD T-Stem Early College High School (Old Memorial Middle School) Phase 1  
Renovations & Additions

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect:  
*(Name, legal status, address and other information)*

ERO International, LLP  
dba ERO Architects  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501  
Telephone Number: (956) 661-0400  
Fax Number: (956) 661-0401

The Owner and Contractor agree as follows.

**C-5149-14-H****TABLE OF ARTICLES**

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**
- 10 INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.  
*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

| The commencement date will be fixed in a notice to proceed.

| If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

| N/A

| § 3.2 The Contract Time shall be measured from the date of commencement.

| § 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

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Complete Main Classroom Building, Library, North & East parking areas and East Bus Dropoff in Two hundred and Forty (240) calendar days from Notice to Proceed and the remaining site work in an additional One hundred and twenty (120) calendar days from Notice to Proceed. Total 360 calendar days.

Portion of Work	Substantial Completion Date
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, subject to adjustments of this Contract Time as provided in the Contract Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

| N/A

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Million Eighty Seven Thousand Dollars and Zero Cents (\$ 8,087,000.00 ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

| Alternate #1: Generator & Transfer Switch

§ 4.3 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
N/A		

§ 4.4 Allowances included in the Contract Sum, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
Construction Contingency Allowance	\$190,000.00
Civil Engineer's Standard Level of Care Allowance:	\$50,000.00
Structural Engineer's Standard Level of Care Allowance	\$75,000.00
Landscape and Irrigation Allowance	\$45,000.00
Soils Testing Allowance	\$25,000.00
Concrete Testing Allowance	\$40,000.00
Plumbing Standard Level of Care Allowance	\$10,000.00
HVAC Standard Level of Care Allowance	\$40,000.00

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Electrical Standard Level of Care Allowance	\$30,000.00
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**ARTICLE 5 PAYMENTS****§ 5.1 PROGRESS PAYMENTS**

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

For billing purposes, the calendar month shall end on the 25<sup>th</sup> day of the month.

**§ 5.1.3** Provided that an Application for Payment is received by the Architect not later than the Twenty-fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than the second week of the next month days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of *5%*. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of *5%*;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

**§ 5.1.8** Reduction or limitation of retainage, if any, shall be as follows:

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(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Reduction of retainage shall occur upon final acceptance of project.

**§ 5.1.9** Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.2 FINAL PAYMENT**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

**§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Litigation in a court of competent jurisdiction

Other (Specify)

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

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**ARTICLE 8 MISCELLANEOUS PROVISIONS**

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

Six Percent (6) %

§ 8.3 The Owner's representative:  
*(Name, address and other information)*

Dr. Daniel King, Superintendent of Schools  
Pharr-San Juan-Alamo Independent School District  
P.O. Box 769  
Pharr, Texas 78577  
Telephone Number: (956) 354-2000  
Fax Number: (956) 702-5648

§ 8.4 The Contractor's representative:  
*(Name, address and other information)*

Michael D. Smith, President  
Texas Descon, L.P. by Descon 4S, L.L.C.  
It's General Partner  
P.O. Box 3547.  
McAllen, Texas 78502  
Telephone Number: (956) 682-1225  
Fax Number: (956) 682-7369

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

N/A

§ 8.7 The Contractor must sign a completion certificate required by the Texas Education Agency. 19 TAC 61.1036.

§ 8.8 TIME FOR PAYMENT BY GOVERNMENTAL ENTITY. (a) Except as provided by Subsection (b), a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31<sup>st</sup> day after the later of:

- (1) the date the governmental entity receives the goods under the contract;
  - (2) the date the performance of the service under the contract is complete; or
  - (3) the date the governmental entity receives an invoice for the goods or service.
- (b) A payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the 46<sup>th</sup> day after the later event described by Subsections (a)(1) through (3).

Tex. Gov. Code 2251.021

§ 8.9 TIME FOR PAYMENT BY CONTRACTOR. (a) A contractor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10<sup>th</sup> day after the date the contractor receives payment.

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(b) The appropriate share is overdue on the 11<sup>th</sup> day after the date the vendor receives the payment.

Tex. Gov. Code 2251.022

§ 8.10 The Contractor will assert in a written format the main partners and/or owners are not in arrears on child support payments, pursuant the Texas Family code 231.006.

§ 8.11 In addition to other types of insurance required by this contract for the current project, the Contractor is required to provide worker's compensation insurance.

§ 8.12 This contract incorporates the requirements enumerated within sections 22.0834 and 22.085 of the Texas Education Code. Specifically, the Contractor will agree to disclose and submit to PSJA ISD prior to commencing work on a project, a document that will allow it to order the criminal history of each employee who will have continuing duties related to the contracted services and that has or will have direct or indirect contact with students. Further, the Contractor will provide PSJA ISD with advance notice that a person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The Contractor understands PSJA ISD may terminate a contract with a person or business entity if PSJA ISD determines that the person or business entity failed to give notice as required by Subsection (a) of the Texas Education Code 44.034 or misrepresented the conduct resulting in the conviction. Tex. Ed. Code 22.0834, Tex. Ed. Code 22.085 and Tex. Ed. Code 44.034.

§ 8.13 The Contractor will be responsible to clean up the project site to the satisfaction of PSJA ISD. This includes, but not limited to what is found within AIA 201-2007 related to cleaning up. Therefore, in addition to the requirements established within AIA 201-2007, the Contractor will also clean all surfaces, polish all finishes, remove all adhesives and stickers, remove all trash and debris, replace air filters, remove obstructions from drains and repair all damage that occurred during cleanup.

§ 8.14 The Contractor understands the Owner does not warrant or guarantee that accuracy or completeness of the Architect's plans or specifications. Further, no third party may acquire any rights under this contract.

§ 8.15 The Contractor will be required to provide PSJA ISD's staff, including Board of Trustees, Superintendent and other employees with status and all aspect of the project, including but not limited to details and problems associated with the project. Additionally, the contractor may be required to be present during school board meetings and be prepared to discuss all aspects of the project.

§ 8.16 The Contractor will be expected to comply with all state, federal, county and local governmental laws, ordinances and regulations as dictated by the city and county where the project is located.

§ 8.17 The Contractor will provide PSJA ISD with criminal background checks of its employees, workers, and agents. Further, if it is found that one of the Contractor's employees, workers, agents, contractors or sub-contractors is convicted of a felony or a misdemeanor involving moral turpitude, that individual will not be allowed to work on PSJA ISD's property or a location where students are present or likely to be present.

§ 8.18 Contractor shall obtain a criminal history information required by Texas Education Code Chapter 22 regarding "Covered employees." Contractor will also provide written certification of compliance before starting work. Contractor will not assign or immediately remove any employee with a disqualifying history to work on the project. Contractor will remove or not allow any of its employees, agents, or subcontractors convicted of a felony and/or misdemeanor involving moral turpitude from owner's property or a location where students are likely to be present. Further, Contractor will immediately remove an employee, agent or sub-contractor from owner's property if that person is harassing another person, a school district employee, student, parent or any other individual present on owner's property.

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

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(1836090238)

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**§ 9.1.1** The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

**§ 9.1.2** The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 9.1.3** The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
AIA Document A201-2007	General Conditions of the Contract for Construction between Pharr-San Juan-Alamo Independent School District and Contractor	March 30, 2010	40 pages

**§ 9.1.4** The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

**EXHIBIT A**

Section	Title	Date	Pages

**§ 9.1.5** The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

**EXHIBIT B**

Number	Title	Date

**§ 9.1.6** The Addenda, if any:

Number	Date	Pages
Addenda No. 1	March 12, 2010	8 pages
Addenda No. 2	March 24, 2010	107 pages
Addenda No. 3	March 30, 2010	12 pages
Addenda No. 4	April 5, 2010	50 pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

**§ 9.1.7** Additional documents, if any, forming part of the Contract Documents:

.1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

.2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Performance Bond  
Payment Bond  
Power of Attorney

Init.

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User Notes:

(1835099238)

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Certificate of Liability Insurance  
 Notice to Proceed  
 Certificate of Worker's Compensation Insurance  
 Certificate of General Liability  
 Certificate of Automobile Insurance  
 Certificate of Professional Liability-errors and omissions insurance

- .3 Construction Contract with public entities in Texas must specify prevailing wage rates for construction workers. Tex. Gov't Code 2258, et. Seq; Tex. Lab. Code 62.051. The Contractor's rates must not be less than the general prevailing rate of per diem wages in the location where the work is being performed. The District's prevailing wage rate for (1) workers is: \_\_\_\_\_, (2) laborers is: \_\_\_\_\_, (3) construction workers is: \_\_\_\_\_. These rates are at or above PSJA ISD's published rates. Penalties are assessed against contractors who pay less than the District's published prevailing wages. The penalty for a Contractor or Subcontractor who fails to pay the specified rates as required shall pay to PSJA ISD \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract and that are less than PSJA ISD's published prevailing rates. Please see Exhibit A, which indicates the wage rates the Contractor is paying its construction workers, workers, and/or laborers. The Contractor's rates are at or above PSJA ISD's prevailing wage rates.

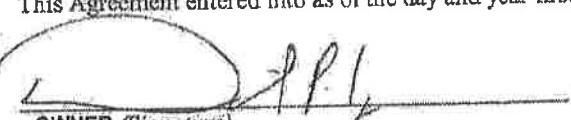
**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Forthcoming	

This Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

Dr. Daniel P. King, Superintendent of Schools  
(Printed name and title)

  
CONTRACTOR (Signature)

Mr. Michael D. Smith, President  
(Printed name and title)

Init.

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**Additions and Deletions Report for  
AIA® Document A101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:54:20 on 05/26/2010.

**PAGE 1**

**AGREEMENT** made as of the Fourth day of May in the year 2010

\*\*\*  
Pharr-San Juan-Alamo Independent School District  
P.O. Box 769  
Pharr, Texas 78577  
Telephone Number: (956) 702-5617  
Fax Number: (956) 783-2257

\*\*\*  
Texas Descon, L.P. by Descon 4S, L.L.C.  
It's General Partner  
P.O. Box 3547  
McAllen, Texas 78502-3547  
Telephone Number: (956) 682-1225  
Fax Number: (956) 682-7369

\*\*\*  
PSJA ISD T-Stem Early College High School (Old Memorial Middle School) Phase 1 Renovations & Additions

\*\*\*  
ERO International, LLP  
dba ERO Architects  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501  
Telephone Number: (956) 661-0400  
Fax Number: (956) 661-0401

**PAGE 2**

The commencement date will be fixed in a notice to proceed.

\*\*\*  
N/A

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§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ← days from the date of commencement, or as follows:

PAGE 3

Complete Main Classroom Building, Library, North & East parking areas and East Bus Dropoff in Two hundred and Forty (240) calendar days from Notice to Proceed and the remaining site work in an additional One hundred and twenty (120) calendar days from Notice to Proceed. Total 360 calendar days.

N/A

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Million Eighty Seven Thousand Dollars and Zero Cents (\$ 8,087,000.00), subject to additions and deductions as provided in the Contract Documents.

Alternate #1: Generator & Transfer Switch

N/A

<u>Construction Contingency Allowance</u>	<u>\$190,000.00</u>
<u>Civil Engineer's Standard Level of Care Allowance:</u>	<u>\$50,000.00</u>
<u>Structural Engineer's Standard Level of Care Allowance</u>	<u>\$75,000.00</u>
<u>Landscape and Irrigation Allowance</u>	<u>\$45,000.00</u>
<u>Soils Testing Allowance</u>	<u>\$25,000.00</u>
<u>Concrete Testing Allowance</u>	<u>\$40,000.00</u>
<u>Plumbing Standard Level of Care Allowance</u>	<u>\$10,000.00</u>
<u>HVAC Standard Level of Care Allowance</u>	<u>\$40,000.00</u>
<u>Electrical Standard Level of Care Allowance</u>	<u>\$30,000.00</u>

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For billing purposes, the calendar month shall end on the 25<sup>th</sup> day of the month.

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§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Twenty-fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( $\rightarrow$ )the second week of the next month days after the Architect receives the Application for Payment.

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Reduction of retainage shall occur upon final acceptance of project.

\*\*\*  
N/A

[ $\rightarrow$ ] — Arbitration pursuant to Section 15.4 of AIA Document A201-2007

PAGE 6

Six Percent (6) %

\*\*\*  
Dr. Daniel King, Superintendent of Schools  
Pharr-San Juan-Alamo Independent School District  
P.O. Box 769  
Pharr, Texas 78577  
Telephone Number: (956) 354-2000  
Fax Number: (956) 702-5648

\*\*\*  
Michael D. Smith, President  
Texas Descon, L.P. by Descon 4S, L.L.C.  
It's General Partner  
P.O. Box 3547,  
McAllen, Texas 78502  
Telephone Number: (956) 682-1225  
Fax Number: (956) 682-7369

\*\*\*  
N/A

§ 8.7 The Contractor must sign a completion certificate required by the Texas Education Agency. 19 TAC 61.1036.

§ 8.8 TIME FOR PAYMENT BY GOVERNMENTAL ENTITY. (a) Except as provided by Subsection (b), a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31<sup>st</sup> day after the later of:

- (1) the date of governmental entity receives the goods under the contract;
  - (2) the date the performance of the service under the contract is complete; or
  - (3) the date the governmental entity receives an invoice for the goods or service.
- (b) A payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is overdue on the 46<sup>th</sup> day after the later event described by Subsections (a)(1) through (3).

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Tex. Gov. Code 2251.021

§ 8.9 TIME FOR PAYMENT BY CONTRACTOR. (a) A contractor who receives a payment from a governmental entity shall pay a subcontractor the appropriate share of the payment not later than the 10<sup>th</sup> day after the date the contractor receives payment.

(b) The appropriate share is overdue on the 11<sup>th</sup> day after the date the vendor receives the payment.

Tex. Gov. Code 2251.022

§ 8.10 The Contractor will assert in a written format the main partners and/or owners are not in arrears on child support payments, pursuant the Texas Family code 231.006.

§ 8.11 In addition to other types of insurance required by this contract for the current project, the Contractor is required to provide worker's compensation insurance.

§ 8.12 This contract incorporates the requirements enumerated within sections 22.0834 and 22.085 of the Texas Education Code. Specifically, the Contractor will agree to disclose and submit to PSJA ISD prior to commencing work on a project, a document that will allow it to order the criminal history of each employee who will have continuing duties related to the contracted services and that has or will have direct or indirect contact with students. Further, the Contractor will provide PSJA ISD with advance notice that a person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The Contractor understands PSJA ISD may terminate a contract with a person or business entity if PSJA ISD determines that the person or business entity failed to give notice as required by Subsection (a) of the Texas Education Code 44.034 or misrepresented the conduct resulting in the conviction. Tex. Ed. Code 22.0834, Tex. Ed. Code 22.085 and Tex. Ed. Code 44.034.

§ 8.13 The Contractor will be responsible to clean up the project site to the satisfaction of PSJA ISD. This includes, but not limited to what is found within AIA 201-2007 related to cleaning up. Therefore, in addition to the requirements established within AIA 201-2007, the Contractor will also clean all surfaces, polish all finishes, remove all adhesives and stickers, remove all trash and debris, replace air filters, remove obstructions from drains and repair all damage that occurred during cleanup.

§ 8.14 The Contractor understands the Owner does not warrant or guarantee that accuracy or completeness of the Architect's plans or specifications. Further, no third party may acquire any rights under this contract.

§ 8.15 The Contractor will be required to provide PSJA ISD's staff, including Board of Trustees, Superintendent and other employees with status and all aspect of the project, including but not limited to details and problems associated with the project. Additionally, the contractor may be required to be present during school board meetings and be prepared to discuss all aspects of the project.

§ 8.16 The Contractor will be expected to comply with all state, federal, county and local governmental laws, ordinances and regulations as dictated by the city and county where the project is located.

§ 8.17 The Contractor will provide PSJA ISD with criminal background checks of its employees, workers, and agents. Further, if it is found that one of the Contractor's employees, workers, agents, contractors or sub-contractors is convicted of a felony or a misdemeanor involving moral turpitude, that individual will not be allowed to work on PSJA ISD's property or a location where students are present or likely to be present.

§ 8.18 Contractor shall obtain a criminal history information required by Texas Education Code Chapter 22 regarding "Covered employees." Contractor will also provide written certification of compliance before starting work. Contractor will not assign or immediately remove any employee with a disqualifying history to work on the project. Contractor will remove or not allow any of its employees, agents, or subcontractors convicted of a felony and/or misdemeanor involving moral turpitude from owner's property or a location where students are likely to be present. Further, Contractor will immediately remove an employee, agent or sub-contractor from owner's property if that person is harassing another person, a school district employee, student, parent or any other individual present on

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owner's property.

## PAGE 8

<u>AIA Document</u>	<u>General Conditions of</u>	<u>March 30, 2010</u>	<u>40 pages</u>
<u>A201-2007</u>	<u>the Contract for</u>		
	<u>Construction between</u>		
	<u>Pharr-San Juan-Alamo</u>		
	<u>Independent School</u>		
	<u>District and Contractor</u>		

\*\*\*

EXHIBIT A

\*\*\*

EXHIBIT B

\*\*\*

<u>Addenda No. 1</u>	<u>March 12, 2010</u>	<u>8 pages</u>
<u>Addenda No. 2</u>	<u>March 24, 2010</u>	<u>107 pages</u>
<u>Addenda No. 3</u>	<u>March 30, 2010</u>	<u>12 pages</u>
<u>Addenda No. 4</u>	<u>April 5, 2010</u>	<u>50 pages</u>

\*\*\*

<u>Performance Bond</u>
<u>Payment Bond</u>
<u>Power of Attorney</u>
<u>Certificate of Liability Insurance</u>
<u>Notice to Proceed</u>
<u>Certificate of Worker's Compensation Insurance</u>
<u>Certificate of General Liability</u>
<u>Certificate of Automobile Insurance</u>
<u>Certificate of Professional Liability-errors and omissions insurance</u>

- 3 Construction Contract with public entities in Texas must specify prevailing wage rates for construction workers. Tex. Gov't Code 2258, et. Seq; Tex. Lab. Code 62.051. The Contractor's rates must not be less than the general prevailing rate of per diem wages in the location where the work is being performed. The District's prevailing wage rate for (1) workers is: . (2) laborers is: . (3) construction workers is: . These rates are at or above PSJA ISD's published rates. Penalties are assessed against contractors who pay less than the District's published prevailing wages. The penalty for a Contractor or Subcontractor who fails to pay the specified rates as required shall pay to PSJA ISD \$60 for each worker, laborer, or mechanic employed for each calendar day or part of a calendar day the worker is paid less than the wage rates specified in the contract and that are less than PSJA ISD's published prevailing rates. Please see Exhibit A, which indicates the wage rates the Contractor is paying its construction workers, workers, and/or laborers. The Contractor's rates are at or above PSJA ISD's prevailing wage rates.

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Forthcoming

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Dr. Daniel P. King, Superintendent of Schools

Mr. Michael D. Smith, President

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**Certification of Document's Authenticity**

AIA® Document D401™ – 2003

I, Eli R. Ochoa, P.E., AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:54:20 on 05/26/2010 under Order No. 7008596151\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007 - Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

P.E., AIA  
(Title)

May 26, 2010  
(Dated)

\* AS authored by P.S.J.A. ISD \*

EXHIBIT A

PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL  
03149-14-H  
(Old Memorial Middle School) - PHASE I  
RENOVATIONS AND ADDITIONS  
Pharr - San Juan - Alamo Independent School District

ERO Architects  
Project No. 09007  
PSJA ISD CSP #09-10-006

SECTION 00 0111

TABLE OF CONTENTS

DOCUMENTS 0 -- INTRODUCTORY INFORMATION, BIDDING REQUIREMENTS, AND CONTRACT REQUIREMENTS

00 0107 - SEALS PAGE

00 0110 - TABLE OF CONTENTS

00 0115 - LIST OF DRAWING SHEETS

PSJA ISD INVITATION TO SUBMIT BID / PROPOSAL AND SPECIAL CONDITIONS

A. PSJA ISD GENERAL PROVISIONS

1. Bid Preparation and Submission Procedures
2. Statement of Inclusion /Applicability
3. General
4. Contract Time Period
5. Addendum
6. Specifications
7. Bid Evaluation and Award
8. Quantities
9. Packaging
10. Pricing
11. Sales Tax
12. Delivery and Transportation
13. Quality
14. Product Inspection, Testing, and Defective Items
15. Samples
16. Warranties
17. Withdrawal or Modification of Bid
18. Substitutions
19. Deviations from Item Specification or General Terms and Conditions
20. Contract and Purchase Orders
21. Invoices, Packing Lists, and Payment
22. Remedies for Non-Performance of Contract, and Termination of Contract
23. Force Majeure
24. Non-Collusion Certification
25. Assignment - Delegation
26. Certifications regarding Legal, Ethical, and Other Matters
27. Equal Employment Opportunity (EEO) Disclosures
28. Venue
29. Indemnification
30. Arbitration
31. Choice of Law
32. Vendor Year 2000 Compliance
33. Waiver
34. Interpretation - Parole Evidence
35. Right to Assurance
36. Extension / Non-Appropriation Clause
37. Proposal Acceptance
38. Insurance Requirements
39. Installation (when applicable)
40. Inquiries and Interpretations
41. Evaluation Factors and Criteria

PSJA ISD FORMS

PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL  
(Old Memorial Middle School) - PHASE I  
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RENOVATIONS AND ADDITIONS  
Pharr - San Juan - Alamo Independent School District

ERO Architects  
Project No. 09007  
PSJA ISD CSP #09-10-006

- B. Forms Checklist (All Referenced Forms must be Signed and Submitted with Bid / Proposal or Bid / Proposal will be considered Non-Responsive)
1. Form A: Notification to Invitation to Bid
  2. Form B: Deviations / Compliance Signature Page
  3. Form C: Felony Convictions Disclosure Statement
  4. Form D: Anti-Collusion / Bid Acknowledgement Clause
  5. Form E: Conflict of Interest Questionnaire
  6. Form F: Suspension or Debarment Certificate
  7. Form G: Historically Underutilized Business (HUB)
  8. Form H: Texas Family Code Certification
  9. Form I: Dealerships Listing
  10. Form J: Out of State Certifications Page
  11. Form K: No Bid / No Proposal Reply Form
  12. Form L: Instruction to School District Contractors
  13. Form M: Direct Deposit Form
  14. Form N: Vendor Acknowledgement Form

**00 3000 - AVAILABLE PROJECT INFORMATION**

**GEOTECHICAL INVESTIGATION REPORT**

**00 4100 - BID FORM**

**00 5200 - AGREEMENT FORM - AIA DOCUMENT A101 - STANDARD FORM OF  
AGREEMENT BETWEEN OWNER & CONTRACTOR**

**00 7200 - GENERAL CONDITIONS - AIA DOCUMENT A201 - GENERAL CONDITIONS OF  
CONTRACT FOR CONSTRUCTION**

**00 8200 - WAGE RATES**

**DIVISION 1 -- GENERAL REQUIREMENTS**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION  
INDEX FOR ASBESTOS ABATEMENT SPECIFICATIONS PROVIDED BY ENVIROTEST LTD.  
(PSJA ISD PROVIDED CONSULTANT AND SPECIFICATIONS)**

**01 1000 - SUMMARY**

**01 2000 - PRICE AND PAYMENT PROCEDURES**

**01 2100 - ALLOWANCES**

**01 2200 - UNIT PRICES**

**01 2300 - ALTERNATIVES**

**01 3000 - ADMINISTRATIVE REQUIREMENTS**

**01 3216 - CONSTRUCTION PROGRESS SCHEDULE**

**01 4000 - QUALITY REQUIREMENTS**

**01 5000 - TEMPORARY FACILITIES AND CONTROLS**

**01 5713 - TEMPORARY EROSION AND SEDIMENTATION CONTROL**

**01 6000 - PRODUCT REQUIREMENTS**

**01 7000 - EXECUTION AND CLOSEOUT REQUIREMENTS**

**01 7419 - CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL**

**01 7800 - CLOSEOUT SUBMITTALS**

PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL  
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## DIVISION 2 -- SITE CONSTRUCTION

**NOTE: REFERENCE PROJECT MANUAL VOLUME II FOR TECHNICAL SPECIFICATION INDEX FOR CIVIL SPECIFICATION SECTIONS PROVIDED BY (PCE) PEREZ CONSULTING ENGINEERS, LLC**

02 2000 - SITE PREPARATION

02 4100 - DEMOLITION

## DIVISION 3 -- CONCRETE

**NOTE: STRUCTURAL SPECIFICATION SECTIONS PROVIDED BY (FLA)\* FRANK LAM & ASSOCIATES**

03 0130.75 - CONCRETE REPAIR (FLA)\*

03 1000 - CONCRETE FORMING AND ACCESSORIES (FLA)\*

03 2000 - CONCRETE REINFORCING (FLA)\*

03 3000 - CAST-IN-PLACE CONCRETE (FLA)\*

03 3900 - CONCRETE CURING (FLA)\*

03 5216 - LIGHTWEIGHT INSULATING CONCRETE (FLA)\*

03 5400 - CAST UNDERLayment (FLA)\*

## DIVISION 4 -- MASONRY

04 0100 - MAINTENANCE OF MASONRY

04 0511 - MASONRY MORTARING AND GROUTING

04 2000 - UNIT MASONRY

04 2731 - REINFORCED UNIT MASONRY

04 7200 - CAST STONE MASONRY

## DIVISION 5 -- METALS

**NOTE: STRUCTURAL SPECIFICATION SECTIONS PROVIDED BY (FLA)\* FRANK LAM & ASSOCIATES**

05 1200 - STRUCTURAL STEEL FRAMING (FLA)\*

05 2100 - STEEL JOIST FRAMING (FLA)\*

05 3100 - STEEL DECKING (FLA)\*

05 4000 - COLD-FORMED METAL FRAMING (FLA)\*

05 5000 - METAL FABRICATIONS (FLA)\*

05 5100 - METAL STAIRS

05 5134 - ALUMINUM LADDERS

05 5213 - PIPE AND TUBE RAILING

## DIVISION 6 -- WOOD AND PLASTICS

06 0587 - HIGH PRESSURE DECORATIVE LAMINATES

06 1000 - ROUGH CARPENTRY

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ERO Architects  
Project No. 09007  
PSJA ISD CSP #09-10-006

- 06 1054 - WOOD BLOCKING AND CURBING
- 06 2000 - FINISH CARPENTRY
- 06 4100 - CUSTOM CABINETS
- 06 4216 - WOOD VENEER RAISED PANEL WAINSCOT
- 06 6510 - SOLID SURFACE FABRICATION

DIVISION 7 -- THERMAL AND MOISTURE PROTECTION

- 07 1360 - DRAINAGE WATERPROOFING
- 07 1400 - FLUID-APPLIED WATERPROOFING
- 07 1900 - WATER REPELLENTS
- 07 2100 - THERMAL INSULATION
- 07 2400 - EXTERIOR INSULATION AND FINISH SYSTEM
- 07 4113 - METAL ROOF PANELS
- 07 4646 - FIBER CEMENT SIDING
- 07 5300 - COAL-TAR ELASTOMERIC ROOFING SYSTEM (Armko)
- 07 6000 - SHEET METAL & MISC. ACCESSORIES FOR COAL-TAR ELASTOMERIC ROOFING SYSTEM (Armko)
- 07 6110 - SHEET METAL SOFFIT
- 07 6500 - THROUGHWALL FLASHING SYSTEM (Armko)
- 07 7200 - ROOF ACCESSORIES
- 07 8400 - FIRESTOPPING
- 07 9005 - JOINT SEALERS & SEALANTS
- 07 9513 - EXPANSION JOINT COVER ASSEMBLIES

DIVISION 8 -- DOORS AND WINDOWS

- 08 1113 - STEEL DOORS AND FRAMES
- 08 1210 - ALUMINUM INTERIOR DOOR FRAMES
- 08 1423 - ALUMINUM CLAD WOOD COMMERCIAL DOORS
- 08 1433 - STILE AND RAIL WOOD DOORS
- 08 3100 - ACCESS DOORS AND PANELS
- 08 3323 - OVERHEAD COILING DOORS
- 08 4100 - ALUMINUM ENTRANCES AND STOREFRONTS
- 08 4410 - GLAZED ALUMINUM CURTAIN WALL
- 08 5213 - ALUMINUM CLAD WOOD DOUBLE HUNG WINDOWS
- 08 7100 - DOOR HARDWARE & HARDWARE SCHEDULE (Assa/Abloy)
- 08 8100 - GLASS
- 08 8300 - MIRRORS

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**DIVISION 9 -- FINISHES**

- 09 2116 - GYPSUM BOARD ASSEMBLIES**
- 09 3000 - TILING**
- 09 3001 - TILE EDGE PROTECTION**
- 09 5100 - SUSPENDED ACOUSTICAL CEILINGS**
- 09 5114 - FABRIC-FACED ACOUSTICAL CEILINGS**
- 09 5470 - METAL TILE CEILING SYSTEM**
- 09 5700 - ACOUSTICAL WOOD CEILING SYSTEM**
- 09 6423 - HARDWOOD FLOORING - ADHESIVE APPLIED**
- 09 6500 - RESILIENT FLOORING (RUBBER)**
- 09 6501 - RESILIENT (RUBBER) FLOOR TILE, BASE AND STAIR TREADS**
- 09 6800 - CARPETING**
- 09 9000 - PAINTING AND COATING**

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- 10 1101 - VISUAL DISPLAY BOARDS**
- 10 1424 - PLASTIC SIGNS**
- 10 2113 - PLASTIC TOILET COMPARTMENTS**
- 10 2123 - CUBICLES**
- 10 2601 - WALL AND CORNER GUARDS**
- 10 2813 - TOILET ACCESSORIES**
- 10 4260 - CAST METAL PLAQUES**
- 10 4400 - FIRE EXTINGUISHERS, CABINETS AND ACCESSORIES**
- 10 5613 - METAL STORAGE SHELVING**
- 10 7500 - FLAGPOLES**

**DIVISION 11 -- EQUIPMENT**

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- 11 5213 - PROJECTION SCREENS**

**DIVISION 12 -- FURNISHINGS**

- 12 2113 - HORIZONTAL LOUVER BLINDS**
- 12 4940 - ROLLER SHADES**

**DIVISION 13 - SPECIAL CONSTRUCTION - NOT USED**

**DIVISION 14 - CONVEYING SYSTEMS**

- 14 2100 - ELECTRIC TRACTION ELEVATORS**

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PSJA ISD CSP #09-10-006

**REFER TO PROJECT MANUAL VOLUME III FOR THE FOLLOWING SECTIONS**

**00010 - TABLE OF CONTENTS (ERO)**

**00007 - SEAL PAGE (ERO)**

**DIVISION 22 -- PLUMBING**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR MECHANICAL, ELECTRICAL & PLUMBING SPECIFICATION SECTIONS PROVIDED BY (MEPSE) MEP SOLUTIONS ENGINEERING**

**DIVISION 23 -- HEATING VENTILATING AND AIR CONDITIONING**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR MECHANICAL, ELECTRICAL & PLUMBING SPECIFICATION SECTIONS PROVIDED BY (MEPSE) MEP SOLUTIONS ENGINEERING**

**DIVISION 26 -- ELECTRICAL**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR MECHANICAL, ELECTRICAL & PLUMBING SPECIFICATION SECTIONS PROVIDED BY (MEPSE) MEP SOLUTIONS ENGINEERING**

**DIVISION 27 -- COMMUNICATIONS**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR MECHANICAL, ELECTRICAL & PLUMBING SPECIFICATION SECTIONS PROVIDED BY (MEPSE) MEP SOLUTIONS ENGINEERING**

**DIVISION 28 -- ELECTRONIC SAFETY AND SECURITY**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR MECHANICAL, ELECTRICAL & PLUMBING SPECIFICATION SECTIONS PROVIDED BY (MEPSE) MEP SOLUTIONS ENGINEERING**

**NOTE: REFERENCE PROJECT MANUAL VOLUME III FOR TECHNICAL SPECIFICATION INDEX FOR ASBESTOS ABATEMENT SPECIFICATIONS PROVIDED BY ENVIROTEST LTD. (PSJA ISD PROVIDED CONSULTANT AND SPECIFICATIONS)**

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**EXHIBIT B**

PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL  
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- AD201 COMPOSITE DEMOLITION BUILDING PLANS
- AD202 DEMOLITION BASEMENT FLOOR PLANS
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- AD205 DEMOLITION FIRST FLOOR PLAN - AREA 'B' & 'C' (EAST & WEST WINGS)
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FRANK LAM & ASSOCIATES: VOLUME II

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PSJA ISD T-STEM EARLY COLLEGE HIGH SCHOOL  
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**MECHANICAL, ELECTRICAL, PLUMBING**  
**MEP SOLUTIONS ENGINEERING: VOLUME II**

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**TEXAS STATUTORY PERFORMANCE BOND (PUBLIC WORKS)**  
**BOND NO. 105257527**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT**, Texas Descon, LP, (hereinafter called the Principal), as Principal, and Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto Pharr San Juan Alamo Independent School District, (hereinafter called the Obligee), in the amount of **EIGHT MILLION EIGHTY-SEVEN THOUSAND AND NO/100THS Dollars (\$8,087,000.00)** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with the Obligee, dated the 4th day of May, 2010, for PSJA ISD T-Stem Early College High School (Old Memorial Middle School) Phase 1 Renovations and Additions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, That if the said Principal shall faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation shall be null and void; otherwise to remain in full force and effect;

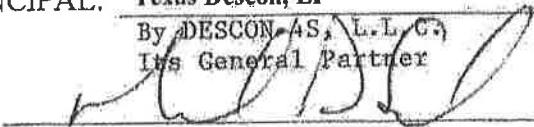
**PROVIDED, HOWEVER**, That this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this 11th day of May, 2010.

**PRINCIPAL:** Texas Descon, LP

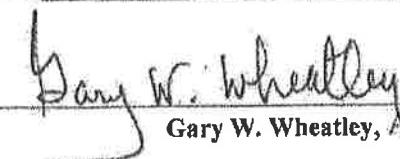
By DESCON AS, L.L.C.  
Its General Partner

**BY:**

  
Michael D. Smith, President

**SURETY:** Travelers Casualty and Surety Company of America

**BY:**

  
Gary W. Wheatley, Attorney-In-Fact

C-5149-14-H

**TEXAS STATUTORY PAYMENT BOND (PUBLIC WORKS)**  
**BOND NO. 105257527**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT**, Texas Descon, LP, (hereinafter called the Principal), as Principal, and Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto Pharr San Juan Alamo Independent School District, (hereinafter called the Obligee), in the amount of **EIGHT MILLION EIGHTY-SEVEN THOUSAND AND NO/100THS Dollars (\$8,087,000.00)** for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a certain contract with the Obligee, dated the 4th day of May, 2010, for PSJA ISD T-Stem Early College High School (Old Memorial Middle School) Phase 1 Renovations and Additions, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH**, That if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then this obligation shall be null and void; otherwise to remain in full force and effect;

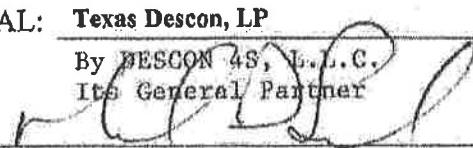
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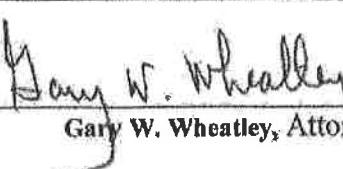
By DESCON 4S, L.L.C.  
Its General Partner

**BY:**

  
Michael D. Smith, President

**SURETY:** Travelers Casualty and Surety Company of America

**BY:**

  
Gary W. Wheatley, Attorney-In-Fact

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# AIA® Document B141™ – 1997 Part 1

## Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services

### TABLE OF ARTICLES

- 1.1 INITIAL INFORMATION
- 1.2 RESPONSIBILITIES OF THE PARTIES
- 1.3 TERMS AND CONDITIONS
- 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 1.5 COMPENSATION

AGREEMENT made as of the Fifteenth day of December in the year 2008.  
*(In words, indicate day, month and year)*

BETWEEN the Architect's client identified as the Owner:  
*(Name, address and other information)*

Pharr-San Juan-Alamo Independent School District  
601 E. Kelly  
Pharr, Texas 78577

and the Architect:  
*(Name, address and other information)*

ERO International, LLP  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501

For the following Project:  
*(Include detailed description of Project)*

Early College High School  
714 E Highway 83  
Pharr, Texas

The Owner and Architect agree as follows:

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

C-5149-14-H

**ARTICLE 1.1 INITIAL INFORMATION**

**§ 1.1.1** This Agreement is based on the following information and assumptions.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

**§ 1.1.2 PROJECT PARAMETERS**

**§ 1.1.2.1** The objective or use is:

(Identify or describe, if appropriate, proposed use or goals.)

| Existing Memorial Middle School to be renovated and adapted for re-use as a 500-600 student high school.

**§ 1.1.2.2** The physical parameters are:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)

| 714 E Highway 83

Pharr, Texas

**§ 1.1.2.3** The Owner's Program is:

(Identify documentation or state the manner in which the program will be developed.)

| To be determined by mutual agreement.

**§ 1.1.2.4** The legal parameters are:

(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)

| To be determined later by mutual agreement.

**§ 1.1.2.5** The financial parameters are as follows.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is: unknown at time of execution of this Agreement
- .2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is: unknown at time of execution of this Agreement

**§ 1.1.2.6** The time parameters are:

(Identify, if appropriate, milestone dates, durations or fast track scheduling.)

| To be determined by mutual agreement.

**§ 1.1.2.7** The proposed procurement or delivery method for the Project is:

(Identify method such as competitive bid, negotiated contract, or construction management.)

| Competitive Bids

**§ 1.1.2.8** Other parameters are:

(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

| N/A

**§ 1.1.3 PROJECT TEAM**

**§ 1.1.3.1** The Owner's Designated Representative is:

(List name, address and other information.)

| Dr. Daniel P. King  
Pharr-San Juan-Alamo Independent School District

Init.

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User Notes:

(3426280384)

C-5149-14-H

601 E. Kelly  
Pharr, Texas 78577  
Telephone Number: (956) 354-2000  
Fax Number: (956) 702-5648  
drking@psja.k12.tx.us

**§ 1.1.3.2** The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

To be determined.

**§ 1.1.3.3** The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

N/A

**§ 1.1.3.4** The Architect's Designated Representative is:  
*(List name, address and other information.)*

Eli R. Ochoa, P.E., AIA  
ERO International, LLP  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501  
Telephone Number: (956) 661-0400  
Fax Number: (956) 661-0401  
eochoa@erointernational.com

**§ 1.1.3.5** The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

To be determined.

**§ 1.1.4** Other important initial information is:

N/A

**§ 1.1.5** When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

**§ 1.1.6** The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Section 1.3.3.

## ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

**§ 1.2.1** The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

### § 1.2.2 OWNER

**§ 1.2.2.1** Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within

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15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

**§ 1.2.2.2** The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

**§ 1.2.2.3** The Owner's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 1.2.2.4** The Owner shall furnish the services of consultants other than those designated in Section 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

**§ 1.2.2.5** Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 1.2.2.6** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 1.2.2.7** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

**§ 1.2.3 ARCHITECT**

**§ 1.2.3.1** The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

**§ 1.2.3.2** The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

**§ 1.2.3.3** The Architect's Designated Representative identified in Section 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

**§ 1.2.3.4** The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

**§ 1.2.3.5** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**§ 1.2.3.6** The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

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**§ 1.2.3.7** The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

**ARTICLE 1.3 TERMS AND CONDITIONS****§ 1.3.1 COST OF THE WORK**

**§ 1.3.1.1** The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

**§ 1.3.1.2** The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

**§ 1.3.1.3** The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

**§ 1.3.2 INSTRUMENTS OF SERVICE**

**§ 1.3.2.1** Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

**§ 1.3.2.2** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's possession or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

**§ 1.3.2.3** Except for the licenses granted in Section 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 1.3.2.4** Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

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**§ 1.3.3 CHANGE IN SERVICES**

**§ 1.3.3.1** Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 1.5.2, and to any Reimbursable Expenses described in Section 1.3.9.2 and Section 1.5.5.

**§ 1.3.3.2** If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

*(Paragraphs deleted)*

**§ 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 1.3.8.

**§ 1.3.7 MISCELLANEOUS PROVISIONS**

**§ 1.3.7.1** This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Section 1.4.2.

**§ 1.3.7.2** Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

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**§ 1.3.7.3** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

**§ 1.3.7.4** To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 1.3.7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

**§ 1.3.7.6** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

**§ 1.3.7.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

**§ 1.3.7.8** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**§ 1.3.7.9** The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

#### **§ 1.3.8 TERMINATION OR SUSPENSION**

**§ 1.3.8.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 1.3.8.2** If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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**§ 1.3.8.3** If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 1.3.8.4** This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 1.3.8.5** This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 1.3.8.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 1.3.8.7.

**| § 1.3.8.7** Termination Expenses are in addition to compensation for the services of the Agreement

**§ 1.3.9 PAYMENTS TO THE ARCHITECT**

**§ 1.3.9.1** Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

**§ 1.3.9.2** Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .7 reimbursable expenses as designated in Section 1.5.5;
- .8 other similar direct Project-related expenditures.

**§ 1.3.9.3** Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

**§ 1.3.9.4** Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS**

**§ 1.4.1** Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

**§ 1.4.1.1** Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

Init.

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**§ 1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:**

*(List other documents, if any, delineating Architect's scope of services.)*

1. Venue for any disputes or suits shall be in Hidalgo County, Texas
2. Owner shall pay reproduction costs for sets of Drawings and Specifications as may be required for Bidding and Construction purposes.
3. Owner shall pay the required fees for review of the Construction Documents by the Texas Department of Licensing and Regulations for compliance with the Texas Accessibility Standards (T.A.S.)
4. In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax applicable to the Project will be added to Architect's invoices.
5. The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2350, Austin, Texas 78701-3942, Tel. (512) 303-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249a, Vernon's Civil Statutes.
6. Should the Owner or Client request changes to the SCOPE OF SERVICES or if additional services are requested, all incurred costs shall be billed on a time and materials basis in accordance with an approved rate schedule. An estimate of additional costs will be provided at an additional cost, if not provided by the Owner.
7. Basic design services do not include survey for, or remediation design of, hazardous material in existing buildings or on the project site. These services can be provided at an additional cost, if not provided by the Owner.
8. Basic design services do not include the design for extension of off-site utilities to the project site, or the provision of service upgrades or improvements outside of the immediate project area on the campus. These services, if required, can be provided as an additional service.
9. Basic design services do not include historical restoration work which may be required by the Texas Historical Commission. Based on the initial investigation performed by Mr. Rene Campos, the old High School building has a designation as a Historical Marker and not that of a Historical Landmark. These services, if required, can be provided as an additional service.

**§ 1.4.1.3 Other documents as follows:**

*(List other documents, if any, forming part of the Agreement.)*

**§ 1.4.2 Special Terms and Conditions.** Special terms and conditions that modify this Agreement are as follows:

#### ARTICLE 1.5 COMPENSATION

**§ 1.5.1** For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

Project Planning Stage Basic Services:

Campus Master Planning	\$15,000.00
Facility Programming (including estimate) for Phase I	\$12,000.00

6% times the cost of work for new construction.

7.75% times the cost of work for adaptive renovation work.

**§ 1.5.2** If the services of the Architect are changed as described in Section 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 1.5.2, in an equitable manner.

*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

#### Hourly Rate Schedule:

Init.

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User Notes:

(3426260884)

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1. Principals	\$160.00
2. Architects and Engineers other than Principals:	\$140.00
3. CADD-Computer Aided Design & Drafting:	\$120.00
4. Interns and Designers	\$ 85.00

§ 1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of One and one-tenth ( 1.10 ) times the amounts billed to the Architect for such services.

§ 1.5.4 For Reimbursable Expenses as described in Section 1.3.9.2, and any other items included in Section 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of One and one-tenth ( 1.10 ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

§ 1.5.5 Other Reimbursable Expenses, if any, are as follows:

§ 1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§ 1.5.7 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§ 1.5.8 Payments are due and payable Thirty ( 30 ) days from the date of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of interest agreed upon.)*

Legal prevailing rate in Hidalgo County, Texas

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 1.5.9 If the services covered by this Agreement have not been completed within Thirty-six ( 36 ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.5.2.

This Agreement entered into as of the day and year first written above.

OWNER

*(Signature)*

Eli R. Ochoa, P.E., AIA

*(Printed name and title)*

ARCHITECT

*(Signature)*

Eli R. Ochoa, P.E., AIA

*(Printed name and title)*

Init.

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**Additions and Deletions Report for  
AIA® Document B141™ – 1997 Part 1**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:40:33 on 12/18/2008.

**PAGE 1**

**AGREEMENT** made as of the Fifteenth day of December in the year 2008.

Pharr-San Juan-Alamo Independent School District  
601 E. Kelly  
Pharr, Texas 78577

ERO International, LLP  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501

Early College High School  
714 E Highway 83  
Pharr, Texas

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Existing Memorial Middle School to be renovated and adapted for re-use as a 500-600 student high school.

714 E Highway 83  
Pharr, Texas

To be determined by mutual agreement.

To be determined later by mutual agreement.

- .1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:  
unknown at time of execution of this Agreement

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.2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:  
unknown at time of execution of this Agreement

...  
To be determined by mutual agreement.

...  
Competitive Bids

...  
N/A

...  
Dr. Daniel P. King  
Pharr-San Juan-Alamo Independent School District  
601 E. Kelly  
Pharr, Texas 78577  
Telephone Number: (956) 354-2000  
Fax Number: (956) 702-5648  
drking@psja.k12.tx.us

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...  
To be determined.

...  
N/A

...  
Eli R. Ochoa, P.E., AIA  
ERO International, LLP  
300 S. 8<sup>th</sup> Street  
McAllen, Texas 78501  
Telephone Number: (956) 661-0400  
Fax Number: (956) 661-0401  
eochoa@erointernational.com

...  
To be determined.

...  
N/A

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**5.4.3.4 MEDIATION**

**5.4.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed**

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in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

**§ 1.3.4.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 1.3.4.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**§ 1.3.5 ARBITRATION**

**§ 1.3.5.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 1.3.4.

**§ 1.3.5.2** Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

**§ 1.3.5.3** A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

**§ 1.3.5.4** No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 1.3.5.5** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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**§ 1.3.8.7** Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

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1. Venue for any disputes or suits shall be in Hidalgo County, Texas
2. Owner shall pay reproduction costs for sets of Drawings and Specifications as may be required for Bidding and Construction purposes.